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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PATRICK LOWDEN and CHRISTI
LOWDEN,

Plaintiff,

v.

MAGGIE MILLER-STOUT, *et al.*,

Defendants.

Case No. C08-5365 BHS/KLS

ORDER RE-NOTING MOTION TO
DISMISS

Presently pending before the court is Defendants’ motion to dismiss Plaintiff’s Complaint. (Dkt. # 3). In response, Plaintiff Patrick Lowden has submitted three declarations, documents relating to another inmate’s case in Thurston County Superior Court, and letters from the Department of Corrections. (Dkts. # 11, 12 and 13).

While the Court may take judicial notice of “matters of public record” without converting a motion to dismiss into a motion for summary judgment, *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir.1986), if matters outside the pleading are presented to and not excluded by the Court, a motion to dismiss shall be treated as one for summary judgment and disposed of as provided in Rule 56. Fed.R.Civ.P. 12(b).

1 As matters outside the pleadings have been presented to the Court for consideration,
2 Defendants should be given a reasonable opportunity to present all materials made pertinent to such
3 a motion by Rule 56. *Id.* Plaintiffs shall be given an opportunity to file a reply.

4 Accordingly, it is **ORDERED**:

- 5 (1) Defendants' Motion to Dismiss (Dkt. # 3) shall be **RENOTED as a motion for**
6 **summary judgment for September 26, 2008**;
- 7 (2) Defendants' Response shall be due on **September 22, 2008** and Plaintiff's Reply, if
8 any, shall be due on **September 26, 2008**;
- 9 (3) Defendants' motion to stay discovery (Dkt. # 3) is **DENIED**; and
- 10 (4) The Clerk of the Court is directed to send copies of this Order to counsel of record
11 and to Plaintiff.

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13 DATED this 21st day of August, 2008.

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18 Karen L. Strombom
19 United States Magistrate Judge
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